

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: § BANKRUPTCY CASE
§
THE KRYSTAL COMPANY, § CASE NO. 20-61065-PWB
§
Debtor. § CHAPTER 11
§

**OBJECTION TO NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES (Doc. 310)**

COMES NOW, Ladas Development, Inc., (“Ladas”) a creditor and party in interest in the above-styled case, and files this limited Objection to The Krystal Company’s “Notice To Contract Parties To Potentially Assumed Executory Contracts and Unexpired Leases” (Docket No. 310), showing the Court as follows:

1.

On June 24, 2008, The Krystal Company (“Krystal”) entered into an “Amended and Restated Lease Agreement” (the “Lease”) with Ladas related to Krystal’s occupancy of certain commercial real property located at the southeast corner of I-65 and Highway 158 (Industrial Parkway) in Saraland, Mobile County, Alabama. A true and correct copy of the “Amended and Restated Lease Agreement” is attached hereto as Exhibit “A”.

2.

Krystal subsequently filed for relief under Chapter 11 of the bankruptcy code on January 19, 2020, listing Ladas as the lessor of one of its store locations and a potential claimant.

3.

On April 7, 2020, Krystal filed a “Notice To Contract Parties To Potentially Assumed Executory Contracts and Unexpired Leases” (the “Notice”) (Docket No. 310). The Notice set a

April 27, 2020 deadline for the listed contract parties to object to either Krystal's calculation of the cure funds due to each listed party, or to Krystal's eventual assignment of the parties' contract(s), or to the ability of a successful bidder for Krystal's assets to provide adequate assurance of future performance with respect to any such contract.

4.

Ladas has reviewed the April 7, 2020 Notice and shows the Court that Krystal has miscalculated the amount currently due under the Lease and/or has failed to account for certain fees and charges which Ladas is entitled to recover under the Lease.

5.

Specifically, Ladas shows that while Krystal's cure appears to have accounted for the two monthly installments currently due under the terms of the Lease (January 2020 and April 2020, in the amounts of \$5,236.88 each), it has failed to account for the late charges which are also due for each of those months. According to Paragraph 1(c) of the Lease "Any rentals or other charges to be paid hereunder by Tenant which are not received by Landlord by the tenth (10th) day of the month shall bear a late charge equal to five percent (5%) of the amount so paid late." *See* Doc. 310, p. 20; Exhibit "A", ¶1(c).

6.

As neither January 2020 nor April 2020's regular monthly installments have been paid as of the date of this objection, Ladas is due a 5.00% late charge on each of those installments. An additional rent payment of \$5,236.88 will become due on May 1, 2020. If the May 2020 payment is not timely paid, additional fees will accrue.

7.

In addition, the Lease provides that Ladas may recover its attorney's fees and costs related

to this action and its enforcement of the Lease. Specifically, Paragraph 12(c) of the Lease states as follows:

"In the event either party is in default in the performance of any term, covenant, agreement or condition contained in this Lease, the defaulting party shall reimburse the non-defaulting party for all costs and expenses, including without limitation, court costs and reasonable attorney's fees incurred by it in protecting its interests, whether or not litigation is involved."

(Emphasis added). Exhibit "A", ¶12(c).

8.

Ladas shows that as of the date of this objection, it has incurred approximately \$2,006.31 in attorney's fees and costs associated with Krystal's default under the Lease and this Chapter 11 case.

9.

Pursuant to 11 U.S.C. § 365(b), Krystal may not assume a defaulted lease unless (1) it cures, or provides "adequate assurance" that it will promptly cure, such default, (2) "compensates, or provides adequate assurance that [it] will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default" and (3) "provides adequate assurance of future performance under such contract or lease." *See* 11 U.S.C. § 365(b)(1)(A)-(C).

10.

Ladas therefore objects to Krystal's Notice as it applies to Ladas, and to Krystal's assumption of the Lease, unless Krystal fully cures its default under the Lease by paying all sums due and owing and provides adequate assurance of any potential assignee's future performance

under the Lease pursuant.

WHEREFORE, Ladas prays that the Honorable Court overrule or deny any relief sought in Krystal's "Notice To Contract Parties To Potentially Assumed Executory Contracts and Unexpired Leases" as it relates to Ladas, that the Court require Krystal to cure its default under the terms of the Lease as a condition of assuming such Lease, and for further relief as is just and appropriate.

RESPECTFULLY SUBMITTED this 27th day of April, 2020.

/s/robert j. solomon
ROBERT J. SOLOMON
Georgia Bar No. 666635

For the Firm of
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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing OBJECTION TO NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES (Doc. 310) using the Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to the following parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program:

- **Austin B. Alexander on behalf of Creditor Mississippi Power Company**
- **Brad Baldwin on behalf of Creditor Alan B Watts Trust**
- **Brad Baldwin on behalf of Creditor Colluro Family Partners LLLP**
- **Brian S. Behar on behalf of Creditor 1045 Ellis Avenue Owner, LLC**
- **William H. Blalock, Jr. on behalf of Creditor Hall County, GA d/b/a Office of Indigent Defense**
- **J. Steven Bloodworth on behalf of Creditor McKrystal LLC**
- **Sarah Robinson Borders on behalf of Debtor The Krystal Company**
- **Sarah Robinson Borders on behalf of JointAdmin Debtor K-Square Acquisition Co., LLC**
- **Sarah Robinson Borders on behalf of JointAdmin Debtor Krystal Holdings, Inc.**
- **Jacob A. Brown on behalf of Creditor Quattrro Business Support Solutions**
- **Joseph J. Burton, Jr. on behalf of Creditor Joseph Carpello**
- **Wade Kyle Cannon on behalf of Creditor Rachel M. Pruett**
- **James S. Carr on behalf of Creditor Committee The Official Committee of Unsecured Creditors of The Krystal Company, et al.**
- **John A. Christy on behalf of Interested Party The Franville Corporation**
- **Leia Ashlin Clement Shermohammed on behalf of Debtor K-Square Acquisition Co., LLC**
- **Leia Ashlin Clement Shermohammed on behalf of Debtor Krystal Holdings, Inc.**
- **Leia Ashlin Clement Shermohammed on behalf of Debtor The Krystal Company**
- **Leia Ashlin Clement Shermohammed on behalf of JointAdmin Debtor K-Square Acquisition Co., LLC**
- **Leia Ashlin Clement Shermohammed on behalf of JointAdmin Debtor Krystal Holdings, Inc.**
- **David F. Cooper on behalf of Creditor 747 Russell Parkway, LLC**
- **David F. Cooper on behalf of Creditor Kushner White Associates Limited Partnership**
- **S. Nathaniel De Veaux on behalf of Creditor 747 Russell Parkway, LLC**
- **S. Nathaniel De Veaux on behalf of Creditor Kushner White Associates Limited Partnership**
- **Frank W. DeBorde on behalf of Creditor Cadence Bank, N.A**
- **C. Edward Dobbs on behalf of Creditor Wells Fargo Bank, National Association**

- **Mark I. Duedall on behalf of Creditor Charles Tombras Advertising, Inc. dba The Tombras Group**
- **Erich N. Durlacher on behalf of Creditor Regions Bank**
- **Thomas Wayne Dworschak on behalf of U.S. Trustee Office of the United States Trustee**
- **Jonathan Turner Edwards on behalf of Creditor DB KRCC LLC; DB KRWB LLC; DB KRWF LLC; DB KRCZ LLC; DB KRRG LLC and DB KRST Investors LLC**
- **T. Lawrence Evans on behalf of Creditor Oak Creek Limited Partnership**
- **Ian M. Falcone on behalf of Creditor 182 Emerson LLC**
- **Jennifer Feldsher on behalf of Creditor Wells Fargo Bank, National Association**
- **Whitney W. Groff on behalf of Creditor Georgia Department of Revenue**
- **Everett L. Hixson, Jr. on behalf of Creditor KRY Warner Robins Realty LLC**
- **Anna Mari Humnicky on behalf of Creditor GAM Development, LLC**
- **John F. Isbell on behalf of Creditor Argonne Capital Group LLC and KRY LLC**
- **Steven M. Jampol on behalf of Creditor Art Plumbing Co.**
- **Leon S. Jones on behalf of Creditor 522 Highway, LLC**
- **Leon S. Jones on behalf of Creditor Marvin Espinola**
- **Walter E. Jones on behalf of Creditor Alabama Power Company**
- **Walter E. Jones on behalf of Creditor Mississippi Power Company**
- **Benjamin Keck on behalf of Attorney Rountree Leitman & Klein, LLC**
- **Benjamin Keck on behalf of Creditor Buckhead 14th KB, LLC**
- **Benjamin Keck on behalf of Creditor Clark/Willmschen Holdings 2, LLC**
- **Benjamin Keck on behalf of Creditor Eden Star Properties, LLC**
- **Benjamin Keck on behalf of Creditor Fairburn KB Freestanding, LLC;**
- **Benjamin Keck on behalf of Creditor Johnson Controls, Inc.**
- **Benjamin Keck on behalf of Creditor KB Ringgold GA, LLC**
- **Benjamin Keck on behalf of Creditor Krystal Columbus DT, LLC**
- **Benjamin Keck on behalf of Creditor Krystal Commerce, LLC**
- **Benjamin Keck on behalf of Creditor LakePoint KB, LLC**
- **Benjamin Keck on behalf of Creditor SLM Waste & Recycling Services, Inc. d/b/a SLMFacility Solutions Nationwide**
- **Charles N. Kelley, Jr. on behalf of Creditor Crescent Sunset Properties, LLC**
- **Gerald P. Kennedy on behalf of Creditor Preferred Premium Properties, LLC**
- **Benjamin S. Klehr on behalf of Creditor GAM Development, LLC**
- **David S. Klein on behalf of Creditor Buckhead 14th KB, LLC**
- **David S. Klein on behalf of Creditor Fairburn KB Freestanding, LLC**
- **David S. Klein on behalf of Creditor KB Ringgold GA, LLC**
- **David S. Klein on behalf of Creditor Krystal Columbus DT, LLC**
- **David S. Klein on behalf of Creditor LakePoint KB, LLC**
- **Sean C. Kulka on behalf of Creditor Committee The Official Committee of Unsecured Creditors of The Krystal Company, et al.**
- **Kurtzman Carson Consultants LLC**

- **Darryl S. Laddin on behalf of Creditor Committee The Official Committee of Unsecured Creditors of The Krystal Company, et al.**
- **Raymond H. Lemisch on behalf of Creditor SLM Waste & Recycling Services Inc. d/b/a SLM Facility Solutions Nationwide**
- **Matthew W. Levin on behalf of Debtor The Krystal Company**
- **T. Charlie Liu on behalf of Creditor Wells Fargo Bank, National Association**
- **Roy E. Manoll, III on behalf of Creditor Jackson Electric Membership Corporation**
- **Paul Reece Marr on behalf of Creditor Peach Willow, LLC**
- **Michael E. Mayo on behalf of Creditor SPP Investments, LLC**
- **Gai Lynn McCarthy on behalf of Creditor 1045 Ellis Avenue Owner, LLC**
- **Gai Lynn McCarthy on behalf of Creditor DSS KRYSTAL JONESBORO, LLC**
- **Gai Lynn McCarthy on behalf of Creditor DSS Krystal, LLC Conyers**
- **Gai Lynn McCarthy on behalf of Creditor DSS Krystal, LLC Stockbridge**
- **Gai Lynn McCarthy on behalf of Creditor Desai Holdings, LLC**
- **Leah Fiorenza McNeill on behalf of Creditor US Foods Inc.**
- **David J. Merbaum on behalf of Creditor Georgia Air & Refrigeration Inc.**
- **Evan T. Miller on behalf of Creditor Krystal V, LLC**
- **Mississippi Power Company**
- **Victor W. Newmark on behalf of Creditor Harden Oil Company, Inc. and Willis N. Harden, Jr. Family Partnership, LP**
- **Office of the United States Trustee**
- **Lisa M. Peters on behalf of Creditor CNL Net Lease Funding 2001, LP**
- **Lisa M. Peters on behalf of Creditor VEREIT Real Estate, L.P.**
- **Stephen B. Porterfield on behalf of Creditor George and Susan Knaysi**
- **Sarah T. Reise on behalf of Creditor CIVF IV-2, LLC**
- **Sarah T. Reise on behalf of Creditor Capview Income & Value Fund IV, LP**
- **Sarah T. Reise on behalf of Creditor STORE Capital Corporation**
- **Sarah T. Reise on behalf of Creditor STORE Master Funding I, LLC**
- **Thomas D. Richardson on behalf of Creditor Florida Power & Light Company**
- **Thomas D. Richardson on behalf of Creditor Georgia Power Company**
- **Thomas D. Richardson on behalf of Creditor Orlando Utilities Commission**
- **Christopher S. Roberge on behalf of Creditor C&L Properties, Inc.**
- **Michael D. Robl on behalf of Creditor Tindell Properties, LLC**
- **Paul M. Rosenblatt on behalf of Creditor Flowers Foods, Inc. and Affiliates**
- **William A. Rountree on behalf of Creditor Buckhead 14th KB, LLC**
- **William A. Rountree on behalf of Creditor Fairburn KB Freestanding, LLC**
- **William A. Rountree on behalf of Creditor KB Ringgold GA, LLC**
- **William A. Rountree on behalf of Creditor Krystal Columbus DT, LLC**
- **William A. Rountree on behalf of Creditor LakePoint KB, LLC**
- **David S. Rubin on behalf of Creditor Tarek Mogharbel, Trustee of the Tarek Mogharbel Trust, and Mira Majzoub, Trustee of the Mira Majzoub Tru**
- **Andres H. Sandoval on behalf of Creditor United States of America**
- **Gus H. Small on behalf of Creditor GAM Development, LLC**
- **Robert J. Solomon on behalf of Creditor Ladas Development, Inc.**

- Erin E. Stark on behalf of Creditor The Cirignano Limited Partnership #3
- Shayna M. Steinfeld on behalf of Creditor Tri-State Refrigeration Company, LLC
- Michael Charles Sullivan on behalf of Creditor Wells Fargo Bank, National Association
- Graham W. Syfert on behalf of Creditor Artesha Plair
- Ronald M. Terenzi on behalf of Creditor The Cirignano Limited Partnership #3
- Cater C. Thompson on behalf of Creditor MetroAir & Refrigeration Service, Inc.
- Ryan David Thompson on behalf of Creditor Mailsouth, Inc. dba Mspark
- John A. Thomson, Jr. on behalf of Creditor PPB&D, Inc.
- Hannah Leah Uricchio on behalf of Creditor Pension Benefit Guaranty Corporation
- Kelly E. Waits on behalf of Creditor Barker's Village, Inc.
- Bruce Z. Walker on behalf of Creditor DJ Rash Realty Company, LLC
- Bruce Z. Walker on behalf of Creditor Hannah Rocks, LLC
- Bruce Z. Walker on behalf of Creditor JMT Land Holdings, LLC
- Thomas R. Walker on behalf of Creditor Georgia Power Company
- C. Brent Wardrop on behalf of Creditor Hachmann, LLC
- Jason H. Watson on behalf of Creditor Cadence Bank, N.A
- Erin A. West on behalf of Creditor Johnson Controls, Inc.
- J. Robert Williamson on behalf of Debtor The Krystal Company
- J. Robert Williamson on behalf of JointAdmin Debtor K-Square Acquisition Co., LLC
- J. Robert Williamson on behalf of JointAdmin Debtor Krystal Holdings, Inc.
- Christian Wilson on behalf of Creditor Aletheia Marketing and Media, LLC
- Stuart Freeman Wilson-Patton on behalf of Creditor TN Dept of Revenue
- Adolyn C. Wyatt on behalf of Creditor Barker's Village, Inc.
- Adolyn C. Wyatt on behalf of Creditor Regions Bank

I further certify that on this day I caused a copy of this document to be served via First-Class U.S. Mail, with adequate postage prepaid, on the following parties set forth below at the addresses shown for each:

Jason R. Adams on behalf of Creditor Committee The Official Committee of Unsecured Creditors of The Krystal Company, et al.
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**Maeghan J. McLoughlin on behalf of Creditor Committee The Official Committee of
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**Don Stecker on behalf of Creditor Bexar County
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**UnitedHealthcare Insurance Company
c/o Shipman & Goodwin LLP
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**Sabin Willett on behalf of Creditor Wells Fargo Bank, National Association
Morgan, Lewis & Bockius LLP
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Boston, MA 02110**

**Eric R. Wilson on behalf of Creditor Committee The Official Committee of Unsecured
Creditors of The Krystal Company, et al.
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178.**

This 27th day of April, 2020.

/s/robert j. solomon
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